

IN THE SUPREME COURT OF THE STATE OF NEVADA

FILED

* * * * *

JAN 26 2016

BRIAN KERRY O'KEEFE,)
Appellant,)
 -vs-)
THE STATE OF NEVADA,)
 _____)
 _____)
Respondent.)

Case No. 69036

TRACIE K. LINDEMAN
 CLERK OF SUPREME COURT
 BY [Signature]
 DEPUTY CLERK

EIGHTH JUDICIAL

DISTRICT COURT CASE No. C250630

COVER PAGE

PETITION FOR REHEARING

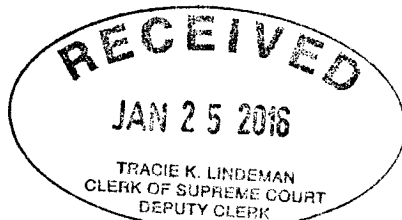
(Denial of Judicial Notice)

01/13/2016

BRIAN KERRY O'KEEFE
 Appellant - Proper Person
 Lovelock Correctional Center
 1200 Prison Road
 Lovelock, Nevada 89419
 BAC No. 90244
 (January 17, 2016)

STEVEN WOLFSON
 Clark County District Attorney
 200 Lewis Avenue, 3RD FLOOR
 Las Vegas, Nevada 89101

ADAM LAXALT
 Attorney General
 100 N. Carson Street
 Carson City, Nevada 89701



Appellant in Proper Person

Attorneys for Respondent

ACCORD HAINES v. KERNER, 404 U.S. 519 (1972)

LCCLL FORM 28.014

16-02725

1
2
3 IN THE SUPREME COURT OF THE STATE OF NEVADA
4

5 BRIAN KERRY O'KEEFE,

6 Appellant,

7 vs.

8
9 THE STATE OF NEVADA,

10 Respondent.
11

Case No. 69036

EIGHTH JUDICIAL DIST. COURT Case No. C250630

12 PETITION FOR REHEARING

13 (Denial of Judicial Notice)

14 COMES NOW, Brian O'Keefe Appellant pro se, and
15 humbly request this Court to consider his Petition for
16 Rehearing, which is extremely relevant to this above case.

17 This Petition is made in direct response to
18 the order dated January 13, 2016 denying appellant's
19 "Motion for Judicial Notice" conflicting with several
20 statutes, rules and federal constitutional principles,
21 pursuant NRAP Rule 40(c)(2)(A) and 40(c)(2)(B).
22 NRS 47.150(2)¹ makes mandatory review, when requested and
23 supplied with documents already existing in the record appealed.
24

25 This Petition is made and based upon all the papers and pleadings
26 on file herein, the Memorandum of Points and Authorities, exhibits.
27

28 fn 1: see ANDOLINO v. STATE, 99 Nev. 346, 21 351

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(Documents Attached) See (PETITION FOR REHEARING)
APPENDIX OF EXHIBITS "REHEARING"

EXHIBIT A	Petition Habeas Corpus Filed 9/15/2014
EXHIBIT B	AMENDED PETITION Habeas Corpus Filed 10/03/2014
EXHIBIT C	AMENDED PETITION EXHIBIT COVERSHEET; "COA"
EXHIBIT D	STATE'S RESPONSE TO AMENDED FILED 10/10/2014
EXHIBIT E	"ORDER" GRANTING P.P.O.W. FILED 10/15/2014
EXHIBIT F	APPELLANT'S REPLY TO STATE'S RESPONSE 10/27/2014

TABLE OF AUTHORITIES

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STATUTES / OTHERS

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28 U.S.C. § 2241 (c)(3) . . .	6

I.

MEMORANDUM OF POINTS AND AUTHORITIESNRAP 40(c)(2) • When Rehearing Considered(A) When the court has overlooked a material fact in the record or a material question of law in the case, or(B) When the court has overlooked, misapplied or failed to consider a statute, procedural rule, regulation or decision directly controlling a dispositive issue in the case.see also 40(b)(2) Contents. . . . where matter is found in record . . .
(Noted location of existing documents and attached appendix.)

II.

STATEMENT OF RELEVANT FACTS

Appellant had filed a "Motion to Take Judicial Notice" on December 29, 2015 with this very court instructing their clerk to officially file, however, ultimately denying on January 13, 2016.

This court was not apprised that this request had also been made in the trial court, as part of the process in record. Additionally, several other matters clearly already exist in the record, before requesting this court to "Notice".

Moreover, this request to take "Judicial Notice" was based upon statute mandating review; when a party requests with supplying the appropriate documents relevant to an appeal.

Petitioner will point out location in fact, supported by the record, made by reference and with appendix attached. This appendix will serve as prima facie evidence of exhibits.

1 Appellant filed Petition for Writ of Habeas Corpus, September 15, 2014.

2 • (see "attached as" EXHIBIT A, pages 1-3. Identify question no. 14 answer.)
 3 (LOCATION RECORD ON APPEAL, no. 69036.) (Volume XXV) (APP 4940-4949)

4 Here, appellant demonstrated conclusion of direct review, 10/15/2013.
 5 This direct review of Supreme Court of Nevada case no. 61631 as 13-6031.²
 6 Docket entry was made by the clerk that U.S. Certiorari had been filed.

7
 8 Appellant successfully amended, filed October 3, 2014, again manifesting
 9 that a U.S. Certiorari had been filed in question no. 14 of petition.

10 • (see EXHIBIT B, pages 1-3. Again identify question no. 14.)

11 • (see also EXHIBIT C, cover sheet EXHIBITS TO AMENDED. see "A" (CoA))
 12 (LOCATION ROA, no. 69036.) (Volume XXV) (APP 4995-5007)

13
 14 State files its "Response" by H. Leon Simon, October 10, 2014.

15 • (see EXHIBIT D, page 1) (LOCATION ROA, APP 5041-5050)

16
 17 Judge Villani grants Writ filing "ORDER - P.P.O.W." on October 15, 2014.

18 • (see EXHIBIT E, order 1 page.) (ORDER OMITTED FROM R.O.A.)

19 • ^{The} Emphasis that appellant never received until February 2015. (Lost.)
 20 • (District Attorney's office mailed to another inmate. Tricked down.)

21 Appellant files reply on October 27, 2014. Mailed on October 20, 2014.

22 • (see EXHIBIT F, Reply 6 pages with one EXHIBIT as "F"; U.S. Cert. 13-6031)

23 Moreover, this document left out of Record with Exhibit "E" above.

24 Appellant signifies that exhibit "F" used, is based on same
 25 substance as previous U.S. Certiorari editorial information based
 26 on being same case no. for both courts. (61631; 13-6031)

27 The state clearly omits, with defense, P.P.O.W. issued.

28 fn 2: Nevada Solicitor General authorized and acted on behalf of Nevada. (see EXH. "F")

III.

(69036) LEGAL ARGUMENT

This Court may only consider matters appearing already in the record on appeal. (see Carson Ready Mix v. First National Bank, 97 Nev. 474, 476)

Clearly, appellant has demonstrated this by actual prima facie evidence attached, with emphasis, in the APPENDIX attached hereto. Most important is that the P.P.O.W. issued by the trial court and the "Reply" is either completely omitted as fact, or not attached in the Record on Appeal, 69036.

The state clearly is therefore utilizing NR Civ. P. Rule 8(d) in the lower court, when omitting that certiorari was filed. This also would apply to no comment of the "want of jurisdiction". Failure to even address this on appeal, F.T.R. - 69036, activates NRAP 31(d). (See Polk v. State, 126 Nev. 19, 233 P.3d 337 (2010)) (Confession of error.)

Moreover, the humble "rehearing request" is validated here by Statute and Rules. This breaks down into several ways. As such, these following apply:

NRS 47.140 Matters of law - subject to judicial notice provisions 1, 2, 8.
1.) The Constitution and Statutes of the U.S. ...; 2.) The Constitution of this state and the Nevada Revised Statutes; and 3.) The Constitution, statutes or other written law of any other state or territory of the U.S., ...

Coupled with NRS 47.150 (2), "A judge or court "SHALL" take judicial notice if requested by a party and supplied with the necessary information." Additional power by NRS 0.025 (1)(d).

1 NRS 0.025 (1)(d) - "shall" - imposes a duty to act. (69036)

2 (see Goudge v State, 287 P.3d 301 (Nev. 2012) (impervious to judicial discretion))

3

4 Appellant utilized due diligence, U.S. First Amendment, and the rights
5 secured by the Nevada Constitution, article 1 section 8 noting the
6 U.S. Fourteenth Amendment due process is applicable to the states.³

7 Here appellant was manifesting that what he requested to
8 be noticed was already in the record and intentionally being
9 omitted. This alone justifies not only rehearing, but the initial
10 "Motion to Take Judicial Notice" filed December 29, 2015.

11 The
12 significance of recognizing this U.S. Certiorari would be to correct
13 any wrongful judgment, to protect appellant, that this state had
14 subject-matter jurisdiction to even proceed when the "COA"
15 had been granted on an interlocutory appeal. Any stay denials
16 are clearly based upon summary denials, holding no precedent,
17 which were proper at the time. The state boasts that
18 denials were issued by the very court that issued the appeal.

19 The state improperly fails to divulge the legal fact, which
20 also Nevada practices, thankfully not, that any Stay request
21 or WRIT of Mandamus is not allowed or proper when one has
22 another remedy properly available which O'Keefe has. (COA)
23 (see EXHIBIT C attached here in Appendix which was as EXHIBIT A in ROA)

24

25 Noting in both "COA's", the Ninth Circuit cites SLACK v. McDaniel,
26 529 U.S. 473, at 475. (Congress expressed no intention to allow trial court
27 procedural error to bar vindication of substantial constitutional rights on appeal.)

28 fn 3: see Benton v. Maryland, 395 U.S. 75. 5 -

Appellant's claim is the state ran roughshod over everyone and O'Keefe's petition for Certiorari did not stipulate the loss of all rights.

Recognizing that since Nevada did proceed with the third trial, the appeal to the U.S. Supreme Court, case no. 13-6031 exposed several facts. First, the Rules of the U.S. Supreme Court. Here NRS 49.140(8) manifests that U.S.S.C. Rules 9 and 15, should be recognized. The Solicitor General of Nevada participating as respondent for and on behalf of Nevada authorized the appeal by filing notice of appearance (USSC Rule 9(2)) and when filing the express waiver, (USSC Rule 15(5)).

IN FACT, the action of the Solicitor General comply with Gonzalez v. Thaler, 132 S. Ct. 641, 659 explanation that pursuant 28 U.S.C. § 518(a) hold that:

"the Solicitor General is charged with conducting and arguing suits and appeals in the U.S. Supreme Court... in which the U.S. is interested." (see EXHIBIT "F", Reply holding exhibit "F", U.S. Certiorari.)

This is clearly based upon Mr. O'Keefe's pretrial habeas matter raised pretrial pursuant 28 U.S.C. § 2241(c)(3) under no custody, appealed being granted the "COA," pursuant judgment. (see EXHIBIT "A", and "C" in appendix attached manifesting "COA" as exhibit "A.")

IV.

CONCLUSION

In light of the foregoing, appellant is hoping that this Court will recognize the records as prima facie evidence which demonstrate that this existed in the record and can be easily remedied by viewing the supplied court documents showing filed in appendix attached separately.

V.

(69036)
CERTIFICATE OF COMPLIANCE

1.) I hereby certify that this petition complies with the formatting requirements of NRAP 32(a)(4), NRAP 32(a)(5), by using NRAP 32(a)(5)(c).

2.) I further certify that this complies with the page and word limitations pursuant NRAP 40(a) and NRAP 40(b)(3) which has less than 10 pages, and approximately 135 lines of text.

3.) Finally, I hereby certify I have constructed said Petition for Rehearing and read. As such appellate believes to be true and complies as best as possible to all the NRAP Rules. Documents provided to support by reference where in record. Emphasis, appellate has been provided a First Trial Statement but was not supplied with record or Appendix index.

Dated this 17th day of January 2016.

(XIPS 208.165)

Corelock Correctional Center
1200 Prison Road
Corelock, Nevada 89409

Brian L. O'Keefe
B. L. O'Keefe
Proper Person - #90244

VI.

(69036)

CERTIFICATE OF SERVICE BY MAIL

I do certify that I mailed a true and correct copy of the foregoing Petition For Rehearing to the below address(es) on this 19th day of January, 2016, by placing same in the U.S. Mail via prison law library staff, pursuant to MRCP 5(b): Brass Slip No. (1957153)

SUPREME COURT OF NEVADA
OFFICE OF THE CLERK
201 S. Carson Street
Suite 201
Carson City, Nevada 89701

Attorney For _____

() Check for Additional Addresses Below

Note: All parties of the appellate Brian K. O'Keefe electronic filing system, CM/ECF, Brian K. O'Keefe # 90244 will be served by the clerk using that perspective system. Lovelock Correctional Center 1200 Prison Road Lovelock, Nevada 89419

Appellate In Pro Se

ADDRESS(ES) Continued from Above (If Applicable):

_____, Nevada 89____

Attorney For _____

_____, Nevada 89____

Attorney For _____

_____, Nevada 89____

Attorney For _____

IN THE SUPREME COURT OF THE STATE OF NEVADA

BRIAN KERRY O'KEEFE,)

Case No. 69036

Appellant,)

E.F.D.C. C250630

-vs-

THE STATE OF NEVADA

Respondent.

APPELLANT'S APPENDIX TO PETITION FOR
REHEARING

(APPENDIX OF EXHIBITS)
(EXHIBITS "A" thru "F")

BRIAN KERRY O'KEEFE
Appellant - Proper Person
Love Lock Correctional Center
1200 Prison Road
Love Lock, Nevada 89419

BAC No. 90244

(January 17, 2016)

RECEIVED
JAN 25 2016

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
DEPUTY CLERK

Appellant in Proper Person

STEVEN WOLFSON
CLARK COUNTY DISTRICT ATTORNEY
200 LEWIS AVENUE, 3RD FLOOR
LAS VEGAS, NEVADA 89101

ADAM LAXALT
Attorney General
100 N. CARSON STREET
CARSON CITY, NEVADA 89701

Attorneys for Respondent

APPENDIX, PETITION FOR REHEARING (69036)
INDEX OF EXHIBITS

- EXHIBIT A PETITION Habeas Corpus, pgs. 1-3 FILED 9/15/2014
see also (Volume XXV) (APP 4940 - 4949)
- EXHIBIT B AMENDED PETITION HABEAS, pgs. 1-3 FILED 10/03/2014
see also (Volume XXV) (APP 4995 - 5007)
- EXHIBIT C COVER SHEET EXHIBITS TO AMENDED COA - 10/03/2014
(NOT MANIFESTED IN F.T.S. OR F.T.R.) (ROA)
- EXHIBIT D STATES RESPONSE TO AMENDED FILED 10/10/2014
see also (ROA; APP 5041, 5050)
- EXHIBIT E P.P.O.W. "ORDER GRANTING" FILED 10/15/2014
(NOT MANIFESTED IN F.T.S. OR F.T.R.) (ROA)
- EXHIBIT F Appellant's Reply to State's Response FILED 10/21/2014
(Petition attached.) (NOT MANIFESTED IN ROA.)

Dated January 18, 2016 (Monday)
Pursuant NRS 208.165

By: Brian K. O'Keefe
Brian K. O'Keefe

Propa - Person # 90244
Lovelock Correctional Center
1200 Prison Road
Lovelock, NV 89419

(69036)
EXHIBIT A

Petition HABEAS CORPUS, pgs. 1-3 Filed 9/15/2014

See also (Volume XXV) (APP 4940-4949)

see question NO. 14, U.S. Cert. # 13-6031

see also EXHIBIT "A" as "COA"

EXHIBIT A

PETN
BRIAN KERRY O'KEEFE # 90244
Lovelock Correctional Center
1200 Prison Road
Lovelock, Nevada 89419

FILED
SEP 15 2014

CLERK OF COURT

Petitioner In Pro Se

IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF CLARK

BRIAN KERRY O'KEEFE,

Petitioner,

-vs-

Warden Robert LeGrand,

Respondent.

“EVIDENTIARY HEARING REQUESTED”

Case No. DB-C250630

Dept. No. (IX) C.S. TOGLIATTI

SEE ATTACHED “EXHIBITS to Petition
for WRIT OF HABEAS CORPUS BY A TRUE
PRETRIAL DETAINEE” (A,B,C,D)

● PETITION FOR WRIT OF HABEAS CORPUS
PURSUANT TO NRS 34.360 EXCLUSIVE 1
BASED ON SUBJECT-MATTER OF AMENDED INFORMATION
VESTED IN NINTH CIRCUIT BY NOTICE OF APPEAL THEN “COA” GRANTED
ON A DOUBLE JEOPARDY VIOLATION WITH NO REMAND ISSUED SINCE.

● N.R.S. 34.360 - Persons who may prosecute writ.

“Every person unlawfully committed, detained, confined or restrained
of his liberty, under any pretense whatever, may prosecute a writ of
habeas corpus to inquire into the cause of such imprisonment or restraint.”

● PETITION

1. Name of institution and county in which you are presently imprisoned or where and how you are presently
restrained of your liberty: LOVELOCK CORRECTIONAL CENTER, PERSHING COUNTY

2. Name and location of court which entered the judgment of conviction under attack: EIGHTH JUDICIAL
DISTRICT COURT, Regional Justice Center 200 Lewis Avenue Las Vegas, NV 89155

3. Date of judgment of conviction: August 28, 2012

4. Case number: DB-C250630

5. (a) Length of sentence: 10-25 years consecutive 8-20 years

FN 1 - IN NO MANNER DOES PETITIONER AGREE TO THIS PETITION TO BE CONSTRUED
AS ANY OTHER VEHICLE. PETITION PRESENTS QUESTION OF LAW CONCERNING
JURISDICTION.

RECEIVED

SEP 12 2014

CLERK OF THE COURT

(b) If sentence is death, state any date upon which execution is scheduled:....

6. Are you presently serving a sentence for a conviction other than the conviction under attack in this motion?

Yes No ☒

If "yes," list crime, case number and sentence being served at this time:

7. Nature of offense involved in conviction being challenged: SECOND DEGREE MALICE (IMPLIED)

MURDER W.D.W. SEE EXHIBIT "C" PG 2 LINES 7-10

8. What was your plea? (check one)

(a) Not guilty ☒

(b) Guilty

(c) Guilty but mentally ill

(d) Nolo contendere

9. If you entered a plea of guilty or guilty but mentally ill to one count of an indictment or information, and a plea of not guilty to another count of an indictment or information, or if a plea of guilty or guilty but mentally ill was negotiated, give details:

10. If you were found guilty or guilty but mentally ill after a plea of not guilty, was the finding made by: (check one)

(a) Jury ☒

(b) Judge without a jury

SEE EXHIBIT "C" PG 2
GIVE ORDERS 53859 58109

11. Did you testify at the trial? Yes No ☒

12. Did you appeal from the judgment of conviction? Yes ☒ No

13. If you did appeal, answer the following:

(a) Name of court: SUPREME COURT OF NEVADA

(b) Case number or citation: 01631

(c) Result: AFFIRMED

(d) Date of result: APRIL 10, 2013 - REHEARING DENIED, JUNE 13, 2013.

(Attach copy of order or decision, if available.) SEE EXHIBIT "B" - AFFIRMANCE (01631) ORDER

14. If you did not appeal, explain briefly why you did not:

Petitioner Filed Petition For
WRIT OF CERTIORARI IN THE U.S. SUPREME COURT CASE No.
13-6031 Being denied October 15, 2013

15. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications or motions with respect to this judgment in any court, state or federal? Yes ☒ No ☐

16. If your answer to No. 15 was "yes," give the following information: SEE EXHIBIT "C"

(a) (1) Name of court: UNITED STATES DISTRICT COURT DISTRICT OF NEVADA, 2:11-CV-02107-CAN-VLF

(2) Nature of proceeding: DOUBLE JEOPARDY PRE-TRIAL § 2241(c)(3)

Habeas Corpus Violation by second trial on same offense after acquittal²

(3) Grounds raised: Double Jeopardy Violation when second trial

jury was sworn in. Second Trial ended in mistrial anyway in which state proceeded on continuing jeopardy doctrine making third trial part of the second trial which is on appeal! - ???

(4) Did you receive an evidentiary hearing on your petition, application or motion? Yes ☒ No ☐

(5) Result: denied, ultimately. (Show Cause Response Ordered)

(6) Date of result: 02/03/2012

(7) If known, citations of any written opinion or date of orders entered pursuant to such result:

DISMISSED PRE-TRIAL "2241" for lack of exhaustion February 2, 2012

JUDGE IMPROPERLY USED RULES GOVERNING SECTION "2254" CASES

(b) As to any second petition, application or motion, give the same information:

SEE EXHIBIT "C"

(1) Name of court: EIGHTH JUDICIAL DISTRICT COURT

(2) Nature of proceeding: POST CONVICTION REMEDY - NRS 176.555

(3) Grounds raised: WANT OF JURISDICTION

(4) Did you receive an evidentiary hearing on your petition, application or motion? Yes ☐ No ☒

(5) Result: DENIED

(6) Date of result: FEBRUARY 27, 2014

(7) If known, citations of any written opinion or date of orders entered pursuant to such result:

ORDER DENYING SIGNED MARCH 20, 2014 - JUDGE Villani, Dep. 17

(c) As to any third or subsequent additional applications or motions, give the same information as above, list them on a separate sheet and attach.

FN 2 - TRIAL COURT INSTRUCTIONAL ERROR, ERRORS IN LAW, ARE DEEMED IRRELEVANT FOR THE PURPOSES OF FEDERAL DOUBLE JEOPARDY; SEE EVANS V. MICHIGAN, 568 US ___, 133 S.Ct. ___, -3- 185 LEd 2d 124, 2013 LEXIS 1614
SEE ALSO SCHAB V. ARIZONA, 501 U.S. 624

(69036)
EXHIBIT B

AMENDED PETITION, HABEAS CORPUS
pgs. 1-3 FILED 10/03/2014

see also (Volume XXIV) (APP 4995-5007)

see question No. 14, U.S. Cert. #13-6031

see also EXHIBIT "A" vs "COA"

EXHIBIT B

DA
PP

(AMENDED)

PETN

BRIAN KERRY O'KEEFE # 90244

Lovelock Correctional Center
1200 Prison Road
Lovelock, Nevada 89419

Ann L. Quinn

CLERK OF THE COURT

Petitioner In Pro Se

Dated September 30, 2014

IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF CLARK

Date of Hearing: 10-28-14

Time of Hearing: 8:15AM

BRIAN KERRY O'KEEFE

90244

Petitioner

“ EVIDENTIARY HEARING REQUESTED ”

Case No. 08-C250630

-vs-

Dept. No. (IX) C.J. TOGLIATTI

Warden Robert LeGrand

et al.,

Respondent

SEE ATTACHED “ EXHIBITS to Petition
for WRIT OF HABEAS CORPUS BY A TRUE
PRETRIAL DETAINEE ” (A,B,C,D)
2nd E

(AMENDED) • PETITION FOR WRIT OF HABEAS CORPUS
PURSUANT TO NRS 34.360 EXCLUSIVE (1)

BASED ON SUBJECT-MATTER OF AMENDED INFORMATION
VESTED IN NINTH CIRCUIT BY NOTICE OF APPEAL THEN “ COA ” GRANTED
ON A DOUBLE JEOPARDY VIOLATION WITH NO REMAND ISSUED SINCE.

• N.R.S. 34.360 - Persons who may prosecute writ.

“ Every person unlawfully committed, detained, confined or restrained
of his liberty, under any pretense whatever, may prosecute a writ of
habeas corpus to inquire into the cause of such imprisonment or restraint ”.

● PETITION

1. Name of institution and county in which you are presently imprisoned or where and how you are presently
restrained of your liberty: LOVELOCK CORRECTIONAL CENTER, PERSHING COUNTY

2. Name and location of court which entered the judgment of conviction under attack: EIGHTH JUDICIAL
DISTRICT COURT, Reginal Justice Center 200 Lewis Avenue Las Vegas, NV

3. Date of judgment of conviction: August 28, 2012

4. Case number: 08-C250630

5. (a) Length of sentence: 10-25 years consecutive 8-20 years

FN 1 - IN NO MANNER DOES PETITIONER AGREE TO THIS PETITION TO BE CONSTRUED
AS ANY OTHER VEHICLE. PETITION PRESENTS QUESTION OF LAW CONCERNING WANT OF
JURISDICTION. SUBJECT MATTER JURISDICTION CAN BE RAISED AT ANY STAGE.

LCC 11 FORM 24.014

RECEIVED
OCT 03 2014
CLERK OF THE COURT

(b) If sentence is death, state any date upon which execution is scheduled:....

6. Are you presently serving a sentence for a conviction other than the conviction under attack in this motion?

Yes No ☒

If "yes," list crime, case number and sentence being served at this time:

[EMPHASIS EXHIBIT "C"] 2nd Degree Malice Implied Murder,
W.D.W. - See EXHIBIT "C" page 2 - First TRIAL REVERSAL ORDER,
S.C.N. #53859, SECOND TRIAL WRIT DENIAL ORDER, S.C.N. #58109 FORNAMES OMITTED.

7. Nature of offense involved in conviction being challenged: THIRD TRIAL 2nd Degree

Malice Implied Murder - SEE EXHIBIT "B" - S.C.N. #61631
W.D.W.

8. What was your plea? (check one)

(a) Not guilty ☒

(b) Guilty

(c) Guilty but mentally ill

(d) Nolo contendere

9. If you entered a plea of guilty or guilty but mentally ill to one count of an indictment or information, and a plea of not guilty to another count of an indictment or information, or if a plea of guilty or guilty but mentally ill was negotiated, give details:

10. If you were found guilty or guilty but mentally ill after a plea of not guilty, was the finding made by: (check one)

(a) Jury ☒

(b) Judge without a jury

11. Did you testify at the trial? Yes Third No ☒

12. Did you appeal from the judgment of conviction? Yes ☒ No

13. If you did appeal, answer the following:

(a) Name of court: Supreme Court of Nevada

(b) Case number or citation: 61631

(c) Result: Affirmed Without Law-of-the-Case

(d) Date of result: April 10, 2013

(Attach copy of order or decision, if available.)

• SEE EXHIBIT "B"

• (IN F.T.B.)
• See FIFTH ISSUE RAISED
• Appointed Counsel failed to send Jury Instructions which were filed under wrong case number along with verdict used C250360 - wrong #.
Correct # - C250630

14. If you did not appeal, explain briefly why you did not:

DID APPEAL (U.S. # 13-6031)
Raised appeal was pending. Summarily denied. Holds no
precedent.

15. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications or motions with respect to this judgment in any court, state or federal? Yes ☒ No ☐

16. If your answer to No. 15 was "yes," give the following information: see EXHIBIT "C"

(a) (1) Name of court: U.S.D.C. - No. 2:11-cv-02109-GMN-VCF

(2) Nature of proceeding: "PRETRIAL" U.S. 5th Amendment Double Jeopardy Claim Raised

Habeas Corpus pursuant 28 U.S.C. § 2241(c)(3) Second trial after acquittal (2)

(3) Grounds raised: 5th Amendment Violation Unlawful act of "Battery"

was not charged in charging document. Was charged by separate source document.
Second Degree felony murder rule; still one crime. Battery merged. Amended Information
did not need to charge underlying battery. Described as stabbing (3)

(4) Did you receive an evidentiary hearing on your petition, application or motion? Yes ☐ No ☐

(5) Result: ultimately denied.

(Show Cause Ordered)

(6) Date of result: 02/03/2012

(7) If known, citations of any written opinion or date of orders entered pursuant to such result:

DISMISSED-LACK OF EXHAUSTION. Judge improperly used RULES GOVERNING SECTION "2254" CASES.
MY PETITION WAS A "2241"

(b) As to any second petition, application or motion, give the same information:

(1) Name of court: E.J.D.C.

(2) Nature of proceeding: POST CONVICTION REMEDY - NRS 176-385

(3) Grounds raised: WANT OF JURISDICTION

(4) Did you receive an evidentiary hearing on your petition, application or motion? Yes ☐ No ☒

(5) Result: DENIED

(6) Date of result: FEBRUARY 27, 2014

(7) If known, citations of any written opinion or date of orders entered pursuant to such result:

MARCH 20, 2014 - JUDGE VILANI Dept. 17 DENIED, STATED "NOT ILLEGAL"

(c) As to any third or subsequent additional applications or motions, give the same information as above, list them on a separate sheet and attach. — See page 3(a) next page.

FN2: Trial court instructional error, errors in law, are deemed irrelevant for the purposes
of federal double jeopardy. see EVANS T. MICHIGAN, 185 LED 2d 124, 2013 LEXIS 1614

FN3: MALICE MURDER/FELONY MURDER ARE STILL ONLY ONE CRIME. see SCHAD V. ARIZONA, 501 US 624
EITHER IS ONLY SINGLE CONCEPT OF MALICE AFORETHOUGHT, EXPRESS OR IMPLIED.

(69036)
EXHIBIT C

COVER SHEETS TO APPENDIX OF EXHIBITS
FOR AMENDED PETITION
MANIFESTING "6A" - (4 pages)
FILED 10/03/2014
(5 pages total with cover)

EXHIBIT C

DA
PP

Electronically Filed
10/03/2014 01:38:46 PM

(AMENDED)

EXHIBITS

Brian Kerry O'Keefe # 90244

Lovelock Correctional Center
1200 Prison Road
Lovelock, Nevada 89419

Alvin D. Quinn

CLERK OF THE COURT

Petitioner

In Pro Se

DATED September 30, 2014.

IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF CLARK

Brian Kerry O'Keefe)

Petitioner)

Case No. 08-CR50630

-vs-

Dept. No. IX - C.J. Foglietti

Warden Robert LeGrand)

Respondent's)

(total of 23 actual exhibits)

"AMENDED"

EXHIBITS TO "AMENDED" PETITION FOR WRIT
OF HABEAS CORPUS BY A TRUE PRETRIAL
DEFENDANT

EXHIBIT "A"
(4 pages)

• Certificate of Appealability

EXHIBIT "B"
(4 pages)

• ORDER OF AFFIRMANCE (61631)

EXHIBIT "C"
(6 pages)

• U.S.D.C. ORDER 2:11-cv-02109-GMN-VCF, Jan. 6, 2012

EXHIBIT "D"
(8 pages)

• GENERAL DOCKET 9th Cir. (Case No. 12-15271)
(See pg. 2 fn. 5)

EXHIBIT "E"
(1 page)

• ACKNOWLEDGMENT OF HEARING NOTICE (SAN FRANCISCO)

ORAL ARGUMENT SCHEDULED 11-17-2014

COURTROOM # 1 - 09:00 AM

DATED: September 29, 2014

Brian V. O'Keefe - PRO - PER
#90244

RECEIVED
LCC11 FORM 24.014
OCT 03 2014

CLERK OF THE COURT

FILED

UNITED STATES COURT OF APPEALS

APR 13 2012

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

BRIAN KERRY O'KEEFE,

Petitioner - Appellant,

v.

DOUG GILLESPIE, Sheriff; et al.,

Respondents - Appellees.

No. 12-15271

D.C. No. 2:11-cv-02109-GMN-VCF
District of Nevada,
Las Vegas

ORDER

Before: PAEZ and CLIFTON, Circuit Judges.

After reviewing the underlying petition and concluding that it states at least one federal constitutional claim debatable among jurists of reason, namely, a double jeopardy violation, we grant the request for a certificate of appealability with respect to the following issues: (1) whether the district court properly determined that appellant's double jeopardy claim was unexhausted, and (2) whether appellant, as a state pre-trial detainee, was required to exhaust his claim in state court before filing his 28 U.S.C. § 2241 petition, *compare Braden v. 30th Judicial Circuit Court of Ky.*, 410 U.S. 484, 489-91 (1973) (emphasizing that the § 2241 petitioner "exhausted all available state court remedies for consideration of [his speedy trial] constitutional claim") *with White v. Lambert*, 370 F.3d 1002, 1008 (9th Cir. 2004) ("If we were to allow White to proceed under 28 U.S.C. §

2241, he would not be subject to . . . state court exhaustion requirements.”). *See* 28 U.S.C. § 2253(c)(3); *Gonzalez v. Thaler*, 132 S. Ct. 641 (2012); *Slack v. McDaniel*, 529 U.S. 473, 483-85 (2000); *Lambright v. Stewart*, 220 F.3d 1022, 1026 (9th Cir. 2000); *see also* 9th Cir. R. 22-1(e).

A review of this court’s docket reflects that the filing and docketing fees for this appeal remain due. Within 21 days of the filing date of this order, appellant shall either (1) pay to the district court the \$455.00 filing and docketing fees for this appeal and file in this court proof of such payment; or (2) file in this court a motion to proceed in forma pauperis, accompanied by a completed CJA Form 23. Failure to pay the fees or file a motion to proceed in forma pauperis shall result in the automatic dismissal of the appeal by the Clerk for failure to prosecute. *See* 9th Cir. R. 42-1.

If appellant moves to proceed in forma pauperis, appellant may simultaneously file a motion for appointment of counsel.

The Clerk shall serve a copy of CJA Form 23 on appellant.

If appellant pays the fees, the following briefing schedule shall apply: the opening brief is due June 25, 2012. There was no appearance by the appellees in the district court. The Clerk shall serve a copy of this order on the Office of the Attorney General, Grant Sawyer Bldg., 555 E. Washington Ave. Suite 3900, Las

Vegas, Nevada 89101, who is requested to enter a notice of appearance on behalf of appellees in this case. If Doug Gillespie, State of Nevada, and Attorney General are no longer the appropriate appellees in this case, counsel for appellees is directed to file simultaneously a motion to substitute party. *See* Fed. R. App. P. 43(c).

By July 25, 2012, appellees shall file an answering brief or a letter indicating that no answering brief will be filed. If appellees file an answering brief, the optional reply brief will be due 14 days after service of the answering brief. If appellant files a motion to proceed in forma pauperis, the briefing schedule will be set upon disposition of the motion.

CIA 23 Rev. 5/98	FINANCIAL AFFIDAVIT																					
IN SUPPORT OF REQUEST FOR ATTORNEY, EXPERT OR OTHER COURT SERVICES WITHOUT PAYMENT OF FEE																						
IN UNITED STATES IN THE CASE OF _____ V.S. _____ _____ AT _____	☐ MAGISTRATE ☐ DISTRICT ☐ APPEALS COURT or ☐ OTHER PANEL (Specify below)	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr><td style="text-align: center;">LOCATION NUMBER</td></tr> <tr><td style="height: 40px;"> </td></tr> </table> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr><td style="text-align: center;">DOCKET NUMBERS</td></tr> <tr><td style="text-align: center;">Magistrate</td></tr> <tr><td style="text-align: center;">District Court</td></tr> <tr><td style="text-align: center;">Court of Appeals</td></tr> </table>	LOCATION NUMBER		DOCKET NUMBERS	Magistrate	District Court	Court of Appeals														
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Court of Appeals																						
PERSON REPRESENTED (Show your full name) _____	<table border="0" style="width: 100%;"> <tr> <td style="width: 50%;"> CHARGE/OFFENSE (describe if applicable & check box →) ☐ Felony ☐ Misdemeanor </td> <td style="width: 50%;"> <table border="0"> <tr><td>1</td><td>☐ Defendant—Adult</td></tr> <tr><td>2</td><td>☐ Defendant - Juvenile</td></tr> <tr><td>3</td><td>☐ Appellant</td></tr> <tr><td>4</td><td>☐ Probation Violator</td></tr> <tr><td>5</td><td>☐ Parole Violator</td></tr> <tr><td>6</td><td>☐ Habeas Petitioner</td></tr> <tr><td>7</td><td>☐ 2255 Petitioner</td></tr> <tr><td>8</td><td>☐ Material Witness</td></tr> <tr><td>9</td><td>☐ Other</td></tr> </table> </td> </tr> </table>		CHARGE/OFFENSE (describe if applicable & check box →) ☐ Felony ☐ Misdemeanor	<table border="0"> <tr><td>1</td><td>☐ Defendant—Adult</td></tr> <tr><td>2</td><td>☐ Defendant - Juvenile</td></tr> <tr><td>3</td><td>☐ Appellant</td></tr> <tr><td>4</td><td>☐ Probation Violator</td></tr> <tr><td>5</td><td>☐ Parole Violator</td></tr> <tr><td>6</td><td>☐ Habeas Petitioner</td></tr> <tr><td>7</td><td>☐ 2255 Petitioner</td></tr> <tr><td>8</td><td>☐ Material Witness</td></tr> <tr><td>9</td><td>☐ Other</td></tr> </table>	1	☐ Defendant—Adult	2	☐ Defendant - Juvenile	3	☐ Appellant	4	☐ Probation Violator	5	☐ Parole Violator	6	☐ Habeas Petitioner	7	☐ 2255 Petitioner	8	☐ Material Witness	9	☐ Other
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7	☐ 2255 Petitioner																					
8	☐ Material Witness																					
9	☐ Other																					

ANSWERS TO QUESTIONS REGARDING ABILITY TO PAY									
EMPLOYMENT	Are you now employed? ☐ Yes ☐ No ☐ Am Self-Employed Name and address of employer: _____ IF YES, how much do you earn per month? \$ _____ IF NO, give month and year of last employment _____ How much did you earn per month? \$ _____ If married is your Spouse employed? ☐ Yes ☐ No IF YES, how much does your Spouse earn per month? \$ _____ If a minor under age 21, what is your Parents or Guardian's approximate monthly income? \$ _____								
ASSETS	OTHER INCOME Have you received within the past 12 months any income from a business, profession or other form of self-employment, or in the form of rent payments, interest, dividends, retirement or annuity payments, or other sources? ☐ Yes ☐ No IF YES, GIVE THE AMOUNT RECEIVED & IDENTIFY THE SOURCES <table border="0" style="width: 100%;"> <tr> <td style="width: 40%; text-align: center;">RECEIVED</td> <td style="width: 60%; text-align: center;">SOURCES</td> </tr> <tr> <td style="text-align: center;">\$ _____</td> <td style="text-align: center;">_____</td> </tr> <tr> <td style="text-align: center;">_____</td> <td style="text-align: center;">_____</td> </tr> <tr> <td style="text-align: center;">_____</td> <td style="text-align: center;">_____</td> </tr> </table>	RECEIVED	SOURCES	\$ _____	_____	_____	_____	_____	_____
	RECEIVED	SOURCES							
\$ _____	_____								
_____	_____								
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CASH	Have you any cash on hand or money in savings or checking accounts? ☐ Yes ☐ No IF YES, state total amount \$ _____								
PROPERTY	Do you own any real estate, stocks, bonds, notes, automobiles, or other valuable property (excluding ordinary household furnishings and clothing)? ☐ Yes ☐ No IF YES, GIVE THE VALUE AND \$ DESCRIBE IT <table border="0" style="width: 100%;"> <tr> <td style="width: 40%; text-align: center;">VALUE</td> <td style="width: 60%; text-align: center;">DESCRIPTION</td> </tr> <tr> <td style="text-align: center;">_____</td> <td style="text-align: center;">_____</td> </tr> <tr> <td style="text-align: center;">_____</td> <td style="text-align: center;">_____</td> </tr> <tr> <td style="text-align: center;">_____</td> <td style="text-align: center;">_____</td> </tr> </table>	VALUE	DESCRIPTION	_____	_____	_____	_____	_____	_____
VALUE	DESCRIPTION								
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OBLIGATIONS & DEBTS	DEPENDENTS	MARITAL STATUS ☐ SINGLE ☐ MARRIED ☐ WIDOWED ☐ SEPARATED OR DIVORCED	Total No. of Dependents _____	List persons you actually support and your relationship to them _____ _____ _____		
		<table border="0" style="width: 100%;"> <tr> <td style="width: 40%;"> APARTMENT OR HOME: _____ </td> <td style="width: 20%;"> Creditors _____ _____ _____ </td> <td style="width: 20%;"> Total Debt \$ _____ \$ _____ \$ _____ \$ _____ </td> <td style="width: 20%;"> Monthly Paymt. \$ _____ \$ _____ \$ _____ \$ _____ </td> </tr> </table>			APARTMENT OR HOME: _____	Creditors _____ _____ _____
APARTMENT OR HOME: _____	Creditors _____ _____ _____	Total Debt \$ _____ \$ _____ \$ _____ \$ _____	Monthly Paymt. \$ _____ \$ _____ \$ _____ \$ _____			

I certify under penalty of perjury that the foregoing is true and correct. Executed on (date) _____

SIGNATURE OF DEFENDANT
(OR PERSON REPRESENTED) _____

(69036)

EXHIBIT D

ONLY COVER, State's Response to Amended Petition
FILED 10/10/2014

see also ROA, App. 5041, 5050

EXHIBIT D

Alvin L. Simon

CLERK OF THE COURT

*Solicitor General
C. Wayne Hodge
2/9/2014 U.S. Cert.
#13-6031*

1 **RSPN**
2 **STEVEN B. WOLFSON**
3 **Clark County District Attorney**
4 **Nevada Bar #001565**
5 **H. LEON SIMON**
6 **Chief Deputy District Attorney**
7 **Nevada Bar #000411**
8 **200 Lewis Avenue**
9 **Las Vegas, Nevada 89155-2212**
10 **(702) 671-2500**
11 **Attorney for Plaintiff**

7 **DISTRICT COURT**
8 **CLARK COUNTY, NEVADA**

9 **THE STATE OF NEVADA,**

10 **Plaintiff,**

11 **-vs-**

12 **BRYAN O'KEEFE,**
13 **aka Brian Kerry O'Keefe, #1447732**

14 **Defendant.**

CASE NO: 08C250630

DEPT NO: XVII

15 **STATE'S RESPONSE AND MOTION TO DISMISS TO DEFENDANT'S PRO PER**
16 **PETITION FOR WRIT OF HABEAS CORPUS PURSUANT TO NRS 34.360**
17 **EXCLUSIVE BASED ON SUBJECT-MATTER OF AMENDED INFORMATION**
18 **VESTED IN NINTH CIRCUIT BY NOTICE OF APPEAL THEN "COA" GRANTED ON**
19 **A DOUBLE JEOPARDY VIOLATION WITH NO REMAND ISSUED SINCE (POST**
20 **CONVICTION), AMENDED PETITION AND ACCOMPANYING EXHIBITS,**
21 **OPPOSITION TO REQUEST FOR EVIDENTIARY HEARING, AND OPPOSITION TO**
22 **PRO PER MOTION TO APPOINT COUNSEL**

23 **DATE OF HEARING: OCTOBER 28, 2014**

24 **TIME OF HEARING: 8:15 AM**

25 **COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County**
26 **District Attorney, through H. LEON SIMON, Chief Deputy District Attorney, and hereby**
27 **submits the attached Points and Authorities in Response to Defendant's Pro Per Post-**
28 **Conviction "Petition for Writ of Habeas Corpus Pursuant to NRS 34.360 Exclusive Based on**
29 **Subject-Matter of Amended Information Vested in Ninth Circuit by Notice of Appeal Then**
30 **"COA" Granted On A Double Jeopardy Violation With No Remand Issued Since,"**
31 **(hereinafter "Post-Conviction Writ of Habeas Corpus"), "Evidentiary Hearing Request"**
32 **(Amended Petition for Writ of Habeas Corpus Pursuant to NRS 34.360 Exclusive Based on**

(69036)

EXHIBIT E

P.P.O.W. "ORDER GRANTING"

FILED 10/15/2014

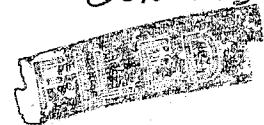
Dept XVII, Judge Villani

see also (NOT MANIFESTED IN RGA.)
(NOT IN F.T.S. or F.T.R.)

(1) page

EXHIBIT E

SCN NO. 69036



2014 OCT 15 P 2:20

DISTRICT COURT
CLARK COUNTY, NEVADA

[Signature]
CLERK OF THE COURT

Brian Kerry O'Keefe,
Petitioner,

vs.

Warden Robert LeGrard,
Respondent,

Case No: C250630
Dept No: 17

ORDER FOR PETITION FOR
WRIT OF HABEAS CORPUS

Petitioner filed a petition for writ of habeas corpus (Post-Conviction Relief) on

September 15, 2014. The Court has reviewed the petition and has determined that a response would assist the Court in determining whether Petitioner is illegally imprisoned and restrained of his/her liberty, and good cause appearing therefore,

IT IS HEREBY ORDERED that Respondent shall, within 45 days after the date of this Order, answer or otherwise respond to the petition and file a return in accordance with the provisions of NRS 34.360 to 34.830, inclusive.

IT IS HEREBY FURTHER ORDERED that this matter shall be placed on this Court's

Calendar on the 28th day of October, 2014, at the hour of

8:15 o'clock for further proceedings.

[Signature]

District Court Judge

[Signature]

RECEIVED BY
DEPT 17 ON
SEP 17 2014

(69036)
EXHIBIT F

APPELLANT'S "REPLY" to STATE'S RESPONSE

HANDED FOR MAILING OCT. 19, 2014

RECEIVED BY CLERK (8th) 10/24/2014

ELECTRONICALLY FILED 10/27/2014

6 page Petition with ONE EXHIBIT "F"

EXHIBIT "F" U.S. Cert. 13-6031 INFO

(TOTAL 11 pages)

* NOT MANIFESTED IN ROA.

EXHIBIT F

DA
PP

RPLY
BRIAN HERRY O'KEEFE # 90244
Lovelock Correctional Center
1200 Prison Road
Lovelock, Nevada 89419

Alvin D. Schuman
CLERK OF THE COURT

Petitioner In Pro Se

IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF CLARK

THE STATE OF NEVADA,)
)
Plaintiff,)
)
-vs-)
)
BRIAN HERRY O'KEEFE,)
)
1947732)
90244 - BAC Defendant,)

Case No. 080250630
Dept. No. XVII
ONE EXHIBIT 25 "F"

"REPLY" TO STATE'S RESPONSE AND MOTION
TO DISMISS TO DEFENDANT'S PRO PER
PETITION FOR WRIT OF HABEAS CORPUS
PURSUANT TO NRS 34.260... SINCE

COMES NOW, Brian Herry O'Keefe, pro per, and hereby submits
the attached Points and Authorities in "REPLY" (NRS 34.470) to
State's Response filed 10/10/2014 in which Mr. O'Keefe received 10/17/2014.

This "REPLY" is made and based upon all the papers and
pleadings on file herein, the attached points and authorities
in support hereof, and requested "evidentiary hearing" by way
of the Court, sua sponte, if additional argument and proof
need be heard.

Respectfully Submitted,
Brian K. O'Keefe - #90244
October 19, 2014

RECEIVED

OCT 27 2014

CLERK OF THE COURT

24.014 FORM 10/14
CLERK OF THE COURT

OCT 24 2014

RECEIVED

STATEMENT OF THE CASE

For judicial economy and judicial administration upon this Court, defendant will stick concisely to the argument at hand, i.e., lack of jurisdiction. Truly, it is petitioner's belief that the State misled the Court compounded by the lack of appearance from the local Attorney General's Office when notified by the Clerk of the U.S. Court of Appeals. (see Exhibit "A" pg 2-3 to Petition)

PETITIONER'S ANSWER PURSUANT NRS 34.470(1)

Noting in the State's procedural is the fact Mr. O'Keefe had requested a stay of the mandate/remittitur from the Supreme Court of Nevada. Mr. O'Keefe had filed a pro per U.S. Certiorari, Case # 13-6031, with the Solicitor General of Nevada, C. Wayne Houde responding.

Additionally, the state clearly construes my petition as a post-conviction pursuant NRS 34.724. (id at page 1, over, line 27)

Here again my petition was clearly filed pursuant to NRS 34.360 in which habeas corpus will lie to test and inquire into, upon submission, the jurisdiction of a court.

The state fails to recognize that the "scope of provisions" pursuant NRS 34.720 to 34.830, inclusive apply only to petitions for writs of habeas corpus in which the petitioner: (1) Requests relief from a judgment or sentence ...

Petitioner was clearly demonstrating the question of jurisdiction and the state's lack of, to proceed to the third trial while

1 subject-matter jurisdiction remains in the Ninth Circuit. Mr.
2 O'Hecke would still remain in custody until the mandate
3 and remand should issue from the Court of Appeals.

4 These facts are statutory law in Nevada.

5 ● a.) NRS 34.360 - Jurisdiction of Court is matter to be inquired
6 into on habeas corpus.

7 see distinguished Camino v. Lewis, 52 Nev. 202 at 20 (1930)

8
9 ● b.) NRS 34.500(1) - Grounds for discharge in certain cases.
10 When the jurisdiction of the Court... has been exceeded.

11
12 ● c.) NRS 34.722 - "Petition defined. As used in 34.720 to
13 34.830, INCLUSIVE, ... "petition" means a
14 postconviction petition for habeas corpus filed
15 pursuant to NRS 34.724

16
17 ● d.) NRS 34.726 - Limitations on time to file; ...
18 PROVISION 1.) Unless there is good cause shown for delay,
19 a petition ... must be filed within 1 year...

20
21 ● e.) NRS 34.720 - The provisions of NRS 34.720 to 34.830,
22 inclusive, apply only to petitioners for writs
23 of habeas corpus ... [34.724]

24
25 Emphasis, Mr. O'Hecke filed under NRS 34.360. For
26 "arguendo", good cause has more than been demonstrated.
27 Petitioner has filed a series of actions and legally the
28 pending appeal still holds exclusive jurisdiction.

FUNDAMENTAL CONSTITUTIONAL ERROR

Ineffective Assistance of Counsel claims ("IAC") may be used to overcome state procedural faults. This clearly can assist the Court when petitioner clearly demonstrates prior notice was also given by, 1.) the Clerk of the Ninth Circuit notified all parties that the "Certificate of Appealability Panel" granted an appeal on the subject-matter of JEPARDY using the same formal charging document.

2.) Mr. O'Hare provided multiple copies of the "COA" to the Court also way in advance of trial.

The law holds that even a mere suggestion that the "Court" lacks jurisdiction to proceed, by any party, the Court must properly determine if jurisdiction exists on the subject-matter.

see NRC P 12(b); FRCP 12(b); FRCP 12(b)(5)

see also U.S. v. GONZALEZ, 211 F.3d 440 (2002)

Subject-matter jurisdiction can NEVER be WAIVED or FORFEITED. The objection may be resurrected at any point in the litigation. • See GONZALEZ v. THAYER, 132 S.Ct. 641, citing ("Henderson v. Shinseki," 131 S.Ct. 1197, at 1202)

The Error: "The challenge in this case goes to subject-matter jurisdiction of the Court and hence its power to issue the order. The distinction between subject-matter jurisdiction and waivable defenses is not a mere nicety of legal metaphysics. It rests instead on the central principle... that courts have finite bounds of authority".

CAUSE AND PREJUDICE

1 Court appointed counsel failed to raise or advance the issue of want of
2 jurisdiction on direct appeal. (Martinez v. Ryan, 132 S. Ct. 1319 (2012))
3 This cause was an EXTERNAL FORCE. If the Supreme Court of
4 Nevada would have been briefed on this error of Constitutional
5 magnitude, petitioner would not be raising new. This issue
6 could have been then exhausted for federal court review long ago.
7 The prejudice speaks for itself. This issue professionally
8 briefed could have been won on the merits and precluded
9 any prejudice to the defendant and the Courts. Prejudice lies
10 in the fact that not only was Mr. O'Hecke violated of his
11 due process and equal protection of his rights granted, i.e., § 2253,
12 the law was violated. (U.S. Amendments 1, 5, 6, 14)

13 The Court has jurisdiction of the
14 case and person charged but fails to recognize that subject-
15 matter jurisdiction is held by the 9th Circuit.

16 • Wainwright: (The Younger Abstinence DID NOT APPLY) • This was
17 an immediate appealable Abney-type claim. This was
18 not an order, i.e., collateral order, that could wait.

19 There was no judgment to attack. The briefing schedule
20 had been set for after the third trial, which if it
21 could not be resolved before the trial then Comity existed.

22 The stay was not required and any denial had
23 no precedent against the "COT" issued. In fact
24 the 9th denied because the appeal was already perfected.

25 CONCLUSION
26 GOOD CAUSE SHOWN

27 State's failure to address jurisdiction is an omission. One cannot even
28 file a habeas petition without proper jurisdiction in the first instance.
Exclusive to Ninth Circuit. - 5 -

CERTIFICATE OF SERVICE

I do certify that I mailed a true and correct copy of the foregoing ^{"REPLY"} ~~NOTICE~~
~~TO STATES RESPONSE...SINK~~
~~OF CHANGE OF ADDRESS~~ to the below address(es) on this 19th day of October,
20 14, by placing same in the U.S. Mail, First-Class postage, per NRCP 5(b):

BRIAN K O'KEEFE ZIP # 2004560

NOTE: All parties registered to the OR/ECF electronic filing
system will be served by the clerk using that
respective system.

Brian K O'Keefe
BRIAN K O'KEEFE # 90204

Lovelock Correctional Center
1200 Prison Road
Lovelock, Nevada 89419

Defendant - Petitioner

In Pro Se

AFFIRMATION PURSUANT TO NRS 239B.030

I do affirm that the preceding document, NOTICE OF CHANGE OF ADDRESS, does
NOT contain the social security number of any person.

Dated this 19th day of October, 20 14.

Brian K O'Keefe
Brian K O'Keefe

Defendant - Petitioner

In Pro Se

EXHIBIT "F"

EDITORIAL INFORMATION:
PRIOR HISTORY

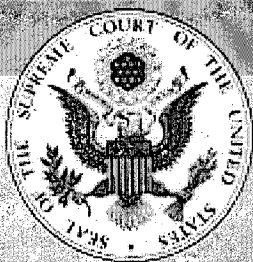
Brian Kerry O'Heefe v. NEVADA

No. 13-6031

08-CZ50630

October 19, 2014

EXHIBIT "F"



SUPREME COURT OF THE UNITED STATES

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No. 13-6031

Title: Brian Kerry O'Keefe, Petitioner
v.
Nevada

Docketed: August 26, 2013

Lower Ct: Supreme Court of Nevada

Case Nos.: (61631)

Decision Date: April 10, 2013

Rehearing Denied: June 13, 2013

~~~Date~~~ ~~~~~Proceedings and Orders~~~~~

Aug 19 2013 Petition for a writ of certiorari and motion for leave to proceed in forma pauperis filed.  
(Response due September 25, 2013)

Sep 13 2013 Waiver of right of respondent Nevada to respond filed

Sep 26 2013 DISTRIBUTED for Conference of October 11, 2013.

Oct 15 2013 Petition DENIED

~~~Name~~~

~~~~~Address~~~~~

~~~Phone~~~

Attorneys for Petitioner:

Brian K. O'Keefe

#90244

P.O. Box 650

Indian Springs, NV 89070-0650

Party name: Brian Kerry O'Keefe

Attorneys for Respondent:

C. Wayne Howle

Counsel of Record

Solicitor General

(775) 684-1261

Office of Attorney General

State of Nevada

100 N. Carson Street

Carson City, NV 89701-4717

WHowle@ag.nv.gov

Party name: Nevada

December 14, 2015 | Version 2014.1

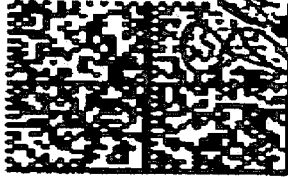
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Benny O'Keefe # 90248

Lawrence Correctional Center

1200 Prison Rd

Lawrence, Mo 64501



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LEGAL MAIL

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